No. 80-1206

IN THE

Supreme Court of the United States

October Term, 1980

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,

Petitioner,

vs.

PITTSBURGH NATIONAL BANK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

RESPONDENT'S BRIEF IN OPPOSITION

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Statement of Issues Involved

The following issues are presented by this appeal:

1. The decision of the Pennsylvania Supreme Court, which did not reach the federal questions raised by the Petitioner, rests on independent and adequate state grounds which render unnecessary any determination of those questions by this Court.

2. The federal questions raised by the Petitioner have been previously presented to this Court.

3. The Petitioner raises issues of fact and law not presented to the Supreme Court of Pennsylvania.

TABLE OF CONTENTS.

	Page
Statement of Issues Involved	i
Table of Authorities	ii
Statement of the Case	1
Argument	5
The decision of the Pennsylvania Supreme Court, which did not reach the federal questions raised by the Petitioner, rests on independent and adequate state grounds which render unnecessary any determination of those questions by this Court	5
The federal questions raised by the Petitioner have been previously presented to this Court	7
The Petitioner raises issues of fact and law not presented to the Supreme Court of Pennsylvania	8
Conclusion. For these reasons, the Petition for a Writ of Certiorari should be denied	10

TABLE OF AUTHORITIES.

Table of Cases.

Cardinale vs. Louisiana, 394 U.S. 437 (1969)	5
Chojnacki Estate, 397 Pa. 596, 156 A. 2d. 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d. 1522 (1960)	7,8
Crowell vs. Rondell, 10 Pet. 368 (1836)	5
Dewey vs. Des Moines, 173 U.S. 193, 197-201 (1899)	5

Page

McGoldrick vs. Compagnie Generale Transatlantique, 309 U.S. 430, 434-435 (1940) 5
Miller vs. Nicholls, 4 Wheat. 311, 315 (1819) 5
Murdock vs. City of Memphis, 20 Wall. 590 (1875) 5
Owings vs. Norwood's Lessee, 5 Cranch 344 (1809) 5,6
Safeway Stores, Inc. vs. Oklahoma Retail Grocers Assn., Inc., 360 U.S. 334, 342, n. 7 (1959) 5
State Farm Mutual Automobile Ins. Co. vs. Duel, 324 U.S. 154, 160-163 (1945) 5
Vecchione vs. Wohlgemuth, 377 F. Suppl. 1361 (E.D. Pa. 1974), on motion to vacate, 426 F. Supp. 1297 (1977), aff'd, 558 F. 2d. 150, cert. denied, 434 U.S. 943, 98 S. Ct. 439 (1978) 6
Whitney vs. California, 274 U.S. 357, 362-363 (1927) 5

STATUTE.

38 U.S.C. Sec. 3101(a) 4,7,8

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PITTSBURGH NATIONAL BANK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

RESPONDENT'S BRIEF IN OPPOSITION

Statement of the Case

Vilma Grcich was a patient at Torrance State Hospital, a facility operated by the Commonwealth of Pennsylvania, from 1936 until her death in 1973. In 1955, the Veterans Administration awarded Vilma Grcich compensation benefits as the dependent parent of a deceased veteran.

In order that these benefits could be made on behalf of Vilma Grcich, on August 1, 1955, a petition for the appointment of a guardian of the estate of Vilma Grcich was filed in the Court of Common Pleas of Washington County, Pennsylvania. The petition for the appointment of a guardian was presented by Stephen J. Grcich, Vilma Grcich's son and the Petitioner in this case. On August 22, 1955, the Orphans' Court Division of the Court of Common Pleas of Washington County entered an order which appointed Peoples First National Bank and Trust Co. as Guardian of the Estate of Vilma Grcich. As a result of bank mergers, Pittsburgh National Bank became the successor guardian.

From 1955 to 1970, the guardian did not pay the Commonwealth of Pennsylvania for Vilma Grcich's care and maintenance and the veterans' funds were allowed to accumulate. On December 7, 1970, the Commonwealth of Pennsylvania sent a statement of claim to the guardian for the care and maintenance of Vilma Grcich in the amount of $36,710.54 for the period December 29, 1936, through November 30, 1970.

After receiving the Commonwealth's claim, the guardian sought the approval of the Veterans Administration to use the veterans' funds in partial payment of the Commonwealth's claim. The guardian received a letter of March 10, 1971, from the Veterans Administration approving the payment of veterans' funds to the Commonwealth. Further, the guardian, in accordance with Pennsylvania statutory requirements and established Orphans' Court procedure, presented a Petition for Allowance to the Washington County Court of Common Pleas. On April 14, 1971, the Court entered an order which "authorized and directed" the guardian to pay to Torrance State Hospital the sum of $7,600.00 on the state-

ment of claim for the maintenance of Vilma Grcich. The guardian made the payment of $7,600.00 as directed by the Court order. This payment was to apply only to charges incurred after the date of the guardian's appointment, in accordance with the directions of the Veterans Administration.

In October 1972, the Commonwealth requested another lump sum payment for Vilma Grcich's maintenance. As with the first Commonwealth request for payment, the Veterans Administration advised the guardian, by letter of November 14, 1972, that further payment to the Commonwealth was permitted as long as the Grcich Estate retained a balance of $1,000.00 for burial or emergency expenses. And, as with the first Commonwealth request for payment, the Washington County Court of Common Pleas entered an order, dated December 12, 1972, which "authorized and directed" the guardian to pay to Torrance State Hospital the sum of $2,883.00 on the claim for maintenance.

Thus, the guardian made total payments to the Commonwealth of $10,483.00; $10,035.00 of that figure represented Veterans Administration funds which were paid with the written approval of the Veterans Administration and as specifically authorized and directed by valid court orders entered by the Washington County Court of Common Pleas.

Following Mrs. Grcich's death in October 1973, the guardian filed its first and final account with the Washington County Court of Common Pleas on January 4, 1974, and on October 28, 1974, petitioned the Court to confirm the accounting and to order distribution. Stephen J. Grcich, Administrator of the Estate of Vilma

Grcich, filed objections to the account and proposed distribution, contending that the Veterans Administration funds were paid improperly to the Commonwealth.

The Court sustained Stephen Grcich's contention that 38 U. S. Sec. 3101(a) protected the veterans' funds from the Commonwealth's claims and on March 3, 1978, entered an order surcharging the guardian $10,035.00, the amount of Veterans Administration funds paid to the Commonwealth. Exceptions were filed to this order by the guardian and after argument was held, a final order dated May 1, 1978, was issued by Judge Simmons surcharging the guardian $10,035.00, plus interest.

The guardian appealed to the Supreme Court, which on June 29, 1979, by an equally divided court, affirmed the order of the Washington County Orphans' Court.

The guardian petitioned for and was granted reargument before the Pennsylvania Supreme Court. After reargument, at which the Veterans Administration, Commonwealth of Pennsylvania, Pennsylvania Bar Association and Pennsylvania Bankers Association each filed an *amicus curiae* brief on behalf of the guardian, the Pennsylvania Supreme Court, with one Justice not participating, unanimously reversed the order of the lower court on October 31, 1980.

Stephen J. Grcich, Administrator of the Estate of Vilma Grcich, then filed a Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania with this Court on January 19, 1981.

ARGUMENT

The decision of the Pennsylvania Supreme Court, which did not reach the federal questions raised by the Petitioner, rests on independent and adequate state grounds which render unnecessary any determination of those questions by this Court.

It has long been the policy of this Court to refuse review of a federal question if that question was not specifically raised and decided in the state courts below and the state court decision rests on independent and adequate state grounds. See *Owings vs. Norwood's Lessee,* 5 Cranch 344 (1809); *Miller vs. Nicholls,* 4 Wheat. 311, 315 (1819); *Crowell vs. Rondell,* 10 Pet. 368 (1836); *Murdock vs. City of Memphis,* 20 Wall. 590 (1875); *Dewey vs. Des Moines,* 173 U.S. 193, 197-201 (1899); *Whitney vs. California,* 274 U.S. 357, 362-363 (1927); *McGoldrick vs. Compagnie Generale Transatlantique,* 309 U.S. 430, 434-435 (1940); *State Farm Mutual Automobile Ins. Co. vs. Duel,* 324 U.S. 154, 160-163 (1945); *Safeway Stores, Inc. vs. Oklahoma Retail Grocers Assn., Inc.,* 360 U.S. 334, 342, n. 7 (1959); and *Cardinale vs. Louisiana,* 394 U.S. 437 (1969).

The present case comes within this policy because the issue before the Supreme Court of Pennsylvania was whether, under Pennsylvania law, a duly appointed guardian of an incompetent's estate could be surcharged for complying with valid court orders authorizing and directing the guardian to use Veterans Administration funds to discharge legitimate costs incurred by the Commonwealth of Pennsylvania for the care and maintenance of the incompetent.

The Petitioner claims that these court orders were procedurally defective within standards of due process as set forth in *Vecchione vs. Wohlgemuth*, 377 F. Suppl. 1361 (E.D.Pa. 1974), on motion to vacate, 426 F. Supp. 1297 (1977), aff'd, 558 F. 2d. 150, cert. denied, 434 U. S. 943, 98 S.Ct. 439 (1978). However, this issue was not reached by the court below in the present case. In footnote 7 to its Opinion (Pet. Appendix, p. 28) the Pennsylvania Supreme Court clearly states that any claims of violated federal policy do not affect the guardian's protection from liability for acting in compliance with a court order.

In addition, the Court further indicates that its decision, rather than violating *Vecchione*, comports with it in that *Vecchione* dealt with the disbursement of funds prior to an adjudication of incompetency and appointment of a guardian and the procedural safeguards necessary to satisfy due process in that situation. The present case is concerned with disbursement by a guardian, after an adjudication of incompetency, pursuant to court order (See *Vecchione*).

For this Court to take up the issue of due process requirements as enumerated in *Vecchione* and apply them in the present case where the issue was not decided by the Court below would violate the policy begun in *Owings vs. Norwood's Lessee.* In addition, the resultant modifications of long-established Pennsylvania procedural law which could result might effectively destroy the protection and management of incompetents' estates.

If the procedural safeguards of *Vecchione*, where no guardian had been appointed to protect the incompetent's interests were to be extended to situations where guardians have been duly appointed by the courts, the resulting delay and expense involved would be op-

pressive. There would be constant hearings with appointed guardians *ad litem* for the incompetent in interest and required notice to undetermined heirs of the incompetent. The status of the guardian would change from an arm of the court representing the incompetent's legal interest to merely one of several opponents in an adversary relationship. This could well result in a complete retreat by the corporate fiduciary from the field of incompetents' estates. The havoc this would raise in the area of fiduciary law, an area properly controlled by the states, should not be fostered by this Court.

The federal questions raised by the Petitioner have been previously presented to this Court.

It also has been the policy of this Court to refrain from reviewing federal questions which have already been presented for review in prior cases on Petition for Certiorari.

Petitioner here claims that the Court below misinterpreted 38 U.S.C. Sect. 3101(a), in that the Court below should have found the statute to be an absolute bar to the payment of debts from Veterans Administration funds and that no discretion as to the use of the funds could be exercised by the Veterans Administration once the funds are in the guardian's hands.

This federal policy was not reached by the Court below in the present case and no decision was made concerning an application of 38 U.S.C. Sect. 3101(a) (Pet. Appendix, p. 25, footnote 5). However, the Court below did find its decision in the present case to be in harmony with its decision in *Chojnacki Estate,* 397 Pa. 596, 156 A. 2d. 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d. 1522 (1960).

In *Chojnacki Estate,* the Supreme Court of Pennsylvania did reach the issue of federal policy concerning Veterans Administration discretionary powers over funds in the hands of an incompetent's guardian pursuant to 38 U.S.C. Sect. 3101(a). The Court held that the discretionary power exists and the Veterans Administration can direct and withhold payment as it sees fit. See *Chojnacki estate,* p. 600.

In *Chojnacki,* the position of the Pennsylvania Supreme Court regarding this issue of federal policy was clearly decided and then presented to this Court on Petition for Certiorari and the Petition was denied, thereby deciding the Federal question raised. In the present case, the Federal issue was not reached and resolved by the lower court. A fortiori, certiorari should not be granted here.

The Petitioner raises issues of fact and law not presented to the Supreme Court of Pennsylvania.

As stated above, issues not raised and resolved by the Court below should not be the subject of review by this Court. Several issues of law and fact are raised by the Petitioner for the first time before this Court.

The issues of premature declaration of incompetency, the status of Pittsburgh National Bank as guardian, other defenses available to the guardian to protect the funds in question from creditors, and the classification of Veterans compensation benefits are issues which were not raised or resolved before the Court below.

Any determination of these issues would involve complex factual investigations of the circumstances surrounding the declaration of incompetency made by the Court

of Common Pleas of Washington County, the method by which Pittsburgh National Bank was appointed guardian, the work history of the incompetent, the records concerning times when the incompetent was institutionalized, and the way in which the incompetent's veteran son met his death.

These areas of factual investigation are outside this Court's scope of review and their presentment before this Court for initial determination is directly opposed to this Court's policies and legal mandate as to its grant of certiorari. In addition, the facts alleged are distorted, misstated, and intended to inflame the Court.

Petitioner has raised one further issue, and in so doing is attempting to use improperly this Court to question the competency and integrity of the Pennsylvania Supreme Court and the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania. Respondent respectfully requests this Court to exclude from its review the impertinent and unfounded claims of collusion, fraternalism and breach of judicial duty improperly raised by the Petitioner.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied:

In that the Court below did not reach or decide any question of federal law or policy, and in that all substantial federal questions raised by Petitioner have been previously presented to this Court for review, and in that distorted issues not raised below are presented for review, Respondent respectfully requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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